

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED
JAN 09 2006
JOHN F. CORCORAN, CLERK
BY: *J. J. Farber*
DEPUTY CLERK

COLUMBIA GAS CO.,

Plaintiff,

v.

EASEMENTS TO CONSTRUCT FACILITIES
FOR THE MAINTENANCE AND OPERATION
OF GAS TRANSMISSION PIPELINES ACROSS
PROPERTY OF LOUISA COUNTY, VIRGINIA
ET. AL.,

Defendants.

CIVIL ACTION NO. 3:04-CV-00036

ORDER AND OPINION

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiff Columbia Gas Transmission Corp.'s ("Columbia Gas") Motion to Enforce Judgment, filed on December 14, 2005. Columbia Gas moves the Court, pursuant to Federal Rule 70, to enter a judgment conveying to it the easement rights agreed to in the settlement agreement. The Court hereby GRANTS Columbia Gas's motion.

Federal Rule 70 provides that if a judgment directs a party to execute a conveyance of land or perform another specific act, the party fails to comply, and the land at issue lies within the district, the court may enter a judgment that has the effect of a duly executed conveyance. Fed. R. Civ. P. 70. The Court's Order of October 20, 2005 found that the parties had in fact entered an

easement agreement and required Defendant Willie Brice to sign that agreement, attached to the order, on behalf of his mother Susie Mallory and himself. He has failed to do so. Accordingly, a judgment under Rule 70 is proper.

In addition, the Court has inherent power to sanction a party through an assessment of attorney's fees when that party has willfully disobeyed a court order. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-46 (1991); *Kilborn v. Bahkir*, 70 Fed. Appx. 692 (4th Cir. 2003) (unpublished). Here, Defendant Willie Brice has had ample time to comply with the Court's Order of October 20, 2005. Despite his clear obligation under this Order, the Court finds that he has not complied. In addition, he has not responded to Plaintiff's correspondence, nor has he replied Plaintiff's Motion to Enforce Judgment. Even assuming that he originally acted in good faith in refusing to sign the settlement agreement, there is no justification for his decision to ignore the order of October 20. Brice has imposed considerable delay and expense on Columbia Gas. Sanctions are thus justified with respect to Plaintiff's efforts to ensure compliance with the Order of October 20. The Court declines, however, to grant Plaintiff sanctions regarding its Motion for Relief filed on June 29, 2005. Willie Brice may have honestly but erroneously misremembered the settlement discussions, and it would be unreasonable to sanction a legitimate objection to Columbia Gas's claim.

The Court therefore ORDERS that

(1) pursuant to Federal Rule of Civil Procedure 70 Columbia Gas is hereby GRANTED the easement rights set out in the attached agreements and Willie Brice and Susie Mallory are hereby DIVESTED of those rights. This judgment has the effect of a conveyance executed in due form of law;

(2) Defendant Willie Brice shall pay the attorney's fees reasonably incurred by Columbia Gas in connection with its attempts to have Brice sign the easement agreements after October 20, 2005 and in connection with its Motion to Enforce Judgment, now before the Court. The amount of this sanction may be subtracted from the settlement due Willie Brice under the settlement agreement and shall not exceed \$1,400, the amount Columbia Gas is required to pay Brice under the settlement agreement. This Order does not alter the other rights and duties of the parties under the settlement agreement.

It is so ORDERED.

The Clerk of the Court is directed to send a copy of this Order to all counsel of record and pro se litigants.

ENTERED: Dawn L. Moran
U.S. District Judge
January 9, 2006
Date

CATHODIC PROTECTION EASEMENT

THIS AGREEMENT is made this _____ day of June, 2005 between Willie Brice whose residence address is 262 Crewe Road, Louisa, Virginia 23093 and whose mailing address is the same Grantor(s) (hereafter "Landowner," whether one or more), and Columbia Gas Transmission Corporation, a Delaware corporation, with a place of business at 1700 MacCorkle Avenue, S.E., Charleston, WV 25314, and a mailing address of P. O. Box 1273, Charleston, WV 25325-1273, Grantee (hereafter "Columbia").

WITNESSETH

GRANT. In consideration of Columbia's promise to pay Landowner the sum of \$1,400 when Columbia exercises the rights herein granted, Landowner hereby grants to Columbia an exclusive easement to:

- (1) construct, operate, maintain, replace, alter the size of and remove or abandon a cathodic protection system for a pipeline and/or underground cable system, including, without limitation, electric transmission lines, conduits, wires, cables, anodes, ground beds, circuits, cathodic protection equipment and rectifiers;
- (2) connect inlet and outlet electric lines to and from the cathodic protection equipment, including, without limitation, the right to construct, operate, maintain, repair, replace, change the size of and remove or abandon poles together with the necessary guys and other supports, attachments and incidental equipment necessary or proper for use in connection with said electric transmission lines; and
- (3) ingress to and egress from the right-of-way area by means of any location or area between Shannon Hill Road, also known as route 605, and the right of way area;

under, on, across, and through Landowner's property situate in Mineral Twp./Dist., Louisa County, Virginia, containing 1.865 acres, more or less, as more particularly described in that certain deed dated February 16, 2001, from Susie Ann Mallory, to Willie Brice, recorded in the Land Records of said County in Deed/Liber/Volume 669, at page 387, and incorporated herein by reference for a more particular description of said property, said easement area being more specifically shown on Exhibit A, attached hereto and made a part hereof. Columbia shall not expand the easement or add additional above ground facilities within the easement except as required by statute or regulation.

EXHIBIT

Landowner's source of title (if different than above):
Deed/Liber/Volume/Will 669 at page 387, which is incorporated herein by reference.

Property tax or permanent parcel identification number: 79-31

LANDOWNER'S RIGHT OF POSSESSION. Landowner may fully use and enjoy the easement area to the extent that such use and enjoyment does not interfere with Columbia's rights under this Agreement. However, Landowner shall not change the depth of cover over the easement area of any installed facility without the written consent of Columbia, and shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind, including but not limited to buildings, mobile homes, trees, paved roads or paved passage ways or the like on or over the easement area of any installed facility, and shall not store any materials of any kind or operate or allow to be operated any heavy machinery or equipment over the easement area, nor permit the easement area to be covered by standing water, except in the course of normal seasonal irrigation. Provided, however, that Landowner shall have the right to continue to use the existing 20 foot driveway at its present location only as access to the property.

SUCCESSORS. All rights and duties under this Agreement shall benefit and bind Landowner and Columbia and their respective heirs, successors and assigns.

WITNESS the following signature(s) and seal(s):

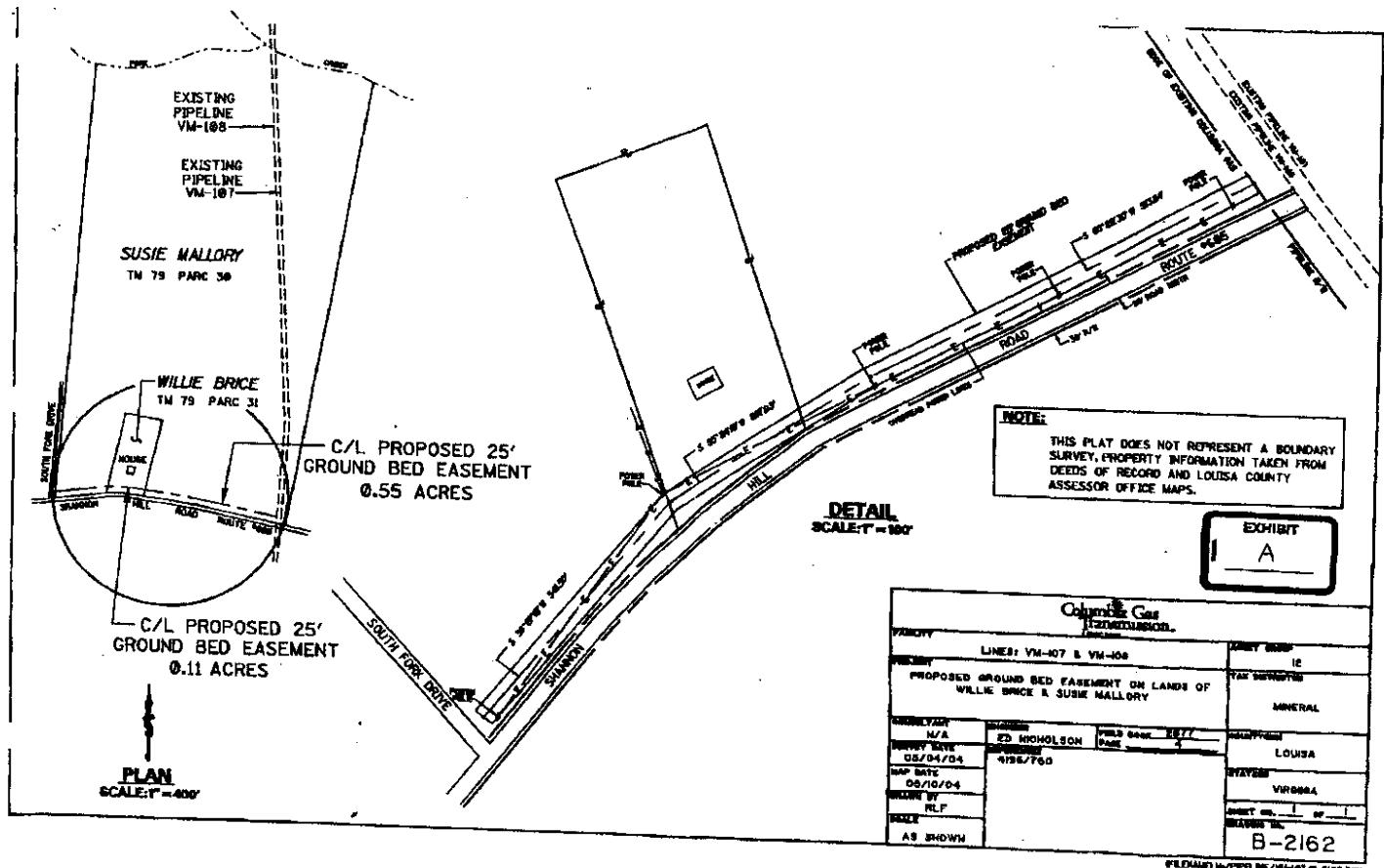
Willie Brice

STATE OF VIRGINIA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____
day of June 2005, by Willie Brice.

My commission expires _____

Notary Public



CATHODIC PROTECTION EASEMENT

THIS AGREEMENT is made this _____ day of June, 2005, between Susie Mallory whose residence address is 262 Crewe Road, Louisa, Virginia 23093 and whose mailing address is the same Grantor(s) (hereafter "Landowner," whether one or more), and Columbia Gas Transmission Corporation, a Delaware corporation, with a place of business at 1700 MacCorkle Avenue, S.E., Charleston, WV 25314, and a mailing address of P. O. Box 1273, Charleston, WV 25325-1273, Grantee (hereafter "Columbia").

W I T N E S S E T H

GRANT. In consideration of Columbia's promise to pay Landowner the sum of \$1,500 when Columbia exercises the rights herein granted, Landowner hereby grants to Columbia an exclusive easement to:

- (1) construct, operate, maintain, replace, alter the size of and remove or abandon a cathodic protection system for a pipeline and/or underground cable system, including, without limitation, electric transmission lines, conduits, wires, cables, anodes, ground beds, circuits, cathodic protection equipment and rectifiers;
- (2) connect inlet and outlet electric lines to and from the cathodic protection equipment, including, without limitation, the right to construct, operate, maintain, repair, replace, change the size of and remove or abandon poles together with the necessary guys and other supports, attachments and incidental equipment necessary or proper for use in connection with said electric transmission lines; and
- (3) ingress to and egress from the right-of-way area by means of any location or area between Shannon Hill Road, also known as route 605, and the right of way area and between South Fork Drive and the right of way area;

under, on, across, and through Landowner's property situate in Mineral Twp./Dist., Louisa County, Virginia, containing 54.14 acres, more or less, as more particularly described in that certain deed dated July 27, 1933, from Marcellus Brice, Sr., to Frank Brice, recorded in the Land Records of said County in Deed/Liber/Volume 52, at page 520, and incorporated herein by reference for a more particular description of said property, said easement area being more specifically shown on Exhibit A, attached hereto and made a part hereof. Columbia shall not expand the easement or add additional above ground facilities within the easement except as required by statute or regulation.

EXHIBIT

2

Landowner's source of title (if different than above):
Deed/Liber/Volume/Will 52 at page 520, which is incorporated herein by reference.

Property tax or permanent parcel identification number: 79-30

LANDOWNER'S RIGHT OF POSSESSION. Landowner may fully use and enjoy the easement area to the extent that such use and enjoyment does not interfere with Columbia's rights under this Agreement. However, Landowner shall not change the depth of cover over the easement area of any installed facility without the written consent of Columbia, and shall not place or permit to be placed any temporary or permanent structure or obstruction of any kind, including but not limited to buildings, mobile homes, trees, paved roads or paved passage ways or the like on or over the easement area of any installed facility, and shall not store any materials of any kind or operate or allow to be operated any heavy machinery or equipment over the easement area, nor permit the easement area to be covered by standing water, except in the course of normal seasonal irrigation.

Notwithstanding the foregoing, Landowner shall have the right to place one twenty-five (25) foot wide gravel or dirt road, passageway or driveway and one fifty (50) foot wide paved, gravel or dirt road, passageway or driveway across the easement area provided, however, that Landowner shall give Columbia 180 days notice in writing before commencing any work on one of the roads, passageways or driveways which notice shall include a description of the proposed driveway, road or passage way. Columbia shall, at its expense, make any necessary adjustments to the cathodic protection cable and agree to the installation of the driveway, road or passageway. Provided, however, that the driveway, road or passageway may only be located between Columbia's existing pipeline right of way, depicted on Exhibit A attached hereto, and the western boundary of the property of Willie Brice depicted on Exhibit A attached hereto. In the event the installation of the 50 foot wide road or passageway requires the installation of an acceleration or deceleration lane or a turn lane and such lane encroaches upon the easement, Columbia will relocate the portion of the easement encroached upon provided that Landowner grants Columbia a new easement for the area to which the existing easement is relocated, which shall be as close as possible to the existing easement area, executes Columbia's standard Relocation Agreement and pays all costs relating to the relocation of the easement or any portion thereof.

SUCCESSORS. All rights and duties under this Agreement shall benefit and bind Landowner and Columbia and their respective heirs, successors and assigns.

WITNESS the following signature(s) and seal(s):

Susie Mallory

By: _____

Print: _____

Attorney in Fact for Susie Mallory

STATE OF VIRGINIA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____
day of June, 2005 by Willie Brice the attorney in fact for Susie Mallory.

My commission expires _____

Notary Public

